

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID H. DEAN,
Plaintiff,
v.

)
)
) CA No. 04-12605-mel
)
)

LOWE'S HOME CENTERS, INC.,
Defendant.

AFFIDAVIT OF AMY L. NASH IN SUPPORT OF
DEFENDANT'S MOTION FOR PROTECTIVE ORDER

I, Amy L. Nash, do depose and state as follows:

1. I am an attorney at the law firm of Littler Mendelson, P.C., One International Place, Suite 2700, Boston, Massachusetts 02110, counsel of record for Lowe's Home Centers, Inc. in this matter. In this Affidavit, I refer to Lowe's Home Centers, Inc. as "Lowe's" or "the Company."

2. In the last sentence of Paragraph 2 of his "Motion in Opposition to the Defendants' Motion for a Protective Order," plaintiff states that "[p]reviously, the plaintiff postponed the deposition of Mr. Puccio and Mr. Romano at the request of defendant on April 14, 2005." This is incorrect.

3. Lowe's has never requested that plaintiff postpone any depositions noticed by plaintiff in this matter. Rather, an assistant in the office of Daniel Federico, counsel for plaintiff, phoned me on or before April 11, 2005 and informed me that Mr. Federico wished to cancel all of the depositions scheduled for April 14, 2005 (of Frank Romano, Dan Puccio, Kris Lovett and Steven Sexton) and May 10, 2005 (of Robert Estes, Steven Vaughn, Jr. and Andy Ramos) and

that he planned to re-notice the depositions of Messrs. Estes, Puccio and Vaughn for Friday, April 29, 2005.

4. Thereafter, by letter to me dated April 11, 2005, Mr. Federico attached re-notices for the depositions of Messrs. Estes, Puccio and Vaughn. In this letter, Mr. Federico merely stated that, "[a]s discussed[,] the depositions scheduled for April 14, 2005 and May 10, 2005 have been canceled." At that time, Mr. Federico did not re-notice the deposition of Mr. Romano. This April 11, 2005 letter and the deposition notices served therewith are attached hereto as Exhibit A.

5. Lowe's never requested that plaintiff postpone Mr. Puccio's deposition, or, for that matter, Mr. Romano's. In a letter to Mr. Federico dated April 15, 2005, Mr. Casey explained that because Lowe's no longer employs Messrs. Puccio or Vaughn, Lowe's could not and was not required to produce them for their depositions, and that, should Mr. Federico wish to depose them, he should subpoena them. This April 15, 2005 letter is attached hereto as Exhibit B. In this letter, Mr. Casey also provided Mr. Federico with Mr. Puccio's last-known address and directed Mr. Federico to Lowe's initial disclosures which contain the last-known address of Mr. Vaughn.

6. Mr. Federico did not re-notice the depositions of Messrs. Romano and Puccio until May 18, 2005. These deposition notices called for the deposition to occur on June 24, 2005. The May 18, 2005 deposition notices are attached hereto as Exhibit C. Mr. Federico never served another notice for the deposition of Mr. Vaughn.

7. On June 6, 2005, Lowe's filed a motion for summary judgment.

8. Even after Lowe's filed its Rule 56 motion, and Mr. Federico filed plaintiff's opposition, Mr. Federico canceled the depositions of Messrs. Romano and Puccio once more by letter dated June 21, 2005. The June 21, 2005 letter is attached hereto as Exhibit D.

9. On July 8, 2005, plaintiff re-noticed the depositions of Messrs. Romano and Puccio for August 12, 2005, which is nearly a month after the close of discovery in this matter, July 15, 2005. The July 8, 2005 deposition notices are attached hereto as Exhibit E.


SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 27th DAY OF JULY 2005.



AMY L. NASH

CERTIFICATE OF SERVICE

I certify that a copy of the above document was mailed to counsel for all parties on this 27th day of July 2005.



Amy L. Nash

Rainer & O'Connor, LLP

Attorneys at Law

**60 Veterans of Foreign Wars Parkway
Revere, Massachusetts 02151**

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Robert K. Rainer
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Daniel C. Federico
Edwin W. Barrett, III
Ryan Matthews
Jeremy Theerman
Christopher S. Brown
Michael Antonello, MD
Ronald H. Rainer (retired)

April 11, 2005

Amy Nash, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

**RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel**

Dear Attorney Nash:

As discussed the depositions scheduled for April 14, 2005 and May 10, 2005 have been canceled. Enclosed are Re-Notices for the Taking of Depositions of Dan Puccio, Robert Estes and Steven Vaughn, Jr., scheduled for Friday, April 29, 2005, at 10:00 a.m., 11:00 a.m. and 12:00 p.m., here at our Revere office.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf
Enclosure

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff.

v.

LOWE'S HOME CENTERS, INC.)
Defendant.


RE-NOTICE OF TAKING DEPOSITION

TO: ALL PARTIES

Please take notice that at 10:00 o'clock a.m., on Friday, April 29, 2005 at the offices of Rainer O'Connor, 60 V.F.W. Parkway, Revere, Massachusetts 02151, the plaintiff in this action, by his attorney, will take deposition upon oral examination of **Dan Puccio** pursuant to Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

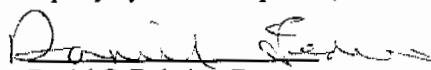
You are invited to attend and cross-examine.

By Plaintiff's Attorney,


Daniel C. Federico
B.B.O. #645717
RAINER & O'CONNOR, LLP
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

CERTIFICATE OF SERVICE

I hereby certify that on this day a true Copy of the above document was served upon the attorney(s) of record for each other party by mail on April 11, 2005.


Daniel C. Federico, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant.

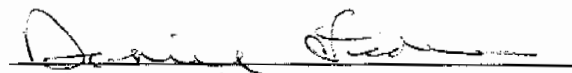
RE-NOTICE OF TAKING DEPOSITION

TO: ALL PARTIES

Please take notice that at 11:00 o'clock a.m., on Friday, April 29, 2005 at the offices of Rainer & O'Connor, 60 V.F.W. Parkway, Revere, Massachusetts 02151, the plaintiff in this action, by his attorney, will take deposition upon oral examination of **Robert Estes** pursuant to Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

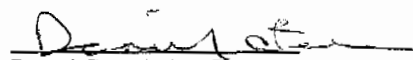
You are invited to attend and cross-examine.

By Plaintiff's Attorney,


Daniel C. Federico
B.B.O. #645717
RAINER & O'CONNOR, LLP
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

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Daniel C. Federico, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant. _____)

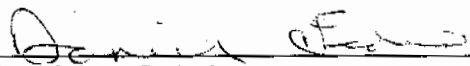
RE-NOTICE OF TAKING DEPOSITION

TO: ALL PARTIES

Please take notice that at 12:00 o'clock p.m., on Friday, April 29, 2005 at the offices of Rainer & O'Connor, 60 V.F.W. Parkway, Revere, Massachusetts 02151, the plaintiff in this action, by his attorney, will take deposition upon oral examination of **Steven Vaughn, Jr.** pursuant to Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

By Plaintiff's Attorney,



Daniel C. Federico
B.B.O. #645717
RAINER & O'CONNOR, LLP
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

CERTIFICATE OF SERVICE

I hereby certify that on this day a true Copy of the above document was served upon the attorney(s) of record for each other party by mail on April 11, 2005.



Daniel C. Federico, Esq.



ARIZONA

CALIFORNIA

COLORADO

DISTRICT OF COLUMBIA

FLORIDA

GEORGIA

ILLINOIS

MASSACHUSETTS

MINNESOTA

NEVADA

NEW JERSEY

NEW YORK

NORTH CAROLINA

OHIO

PENNSYLVANIA

TEXAS

WASHINGTON

April 15, 2005

David C. Casey
Direct: 617.378.6001
Direct Fax: 617.737.0052
dcasey@littler.com

VIA MAIL AND FACSIMILE

Daniel C. Federico, Esquire
Rainer, Walsh & O'Connor, LLP
60 Veterans of Foreign Wars Parkway
Revere, MA 02151

Re: *Dean v. Lowe's Home Centers, Inc.*, No. 04-12605-mel
(United States District Court)

Dear Dan:

We received your letter dated April 11, 2005 along with the enclosed notices for the depositions of Daniel Puccio, Robert Estes and Steven Vaughn scheduled for Friday, April 29, 2005. Steven Vaughn and Daniel Puccio are not employees of Lowe's, nor were they employed by Lowe's at the commencement of this action. We recently learned that Daniel Puccio left his employment with Lowe's in 2003. Therefore, Lowe's is not required and is unable to produce Messrs. Vaughn and Puccio for depositions in this matter. Should you wish to depose Messrs. Vaughn and Puccio, you will have to subpoena them. Mr. Vaughn's last known address is listed in Lowe's initial disclosures. Mr. Puccio's last known address is 119 Fellsway West, Medford, MA 02155.

Once we ascertain Mr. Estes' availability for a deposition on April 29, we will contact you to confirm the date for his deposition.

Very truly yours,

David C. Casey

DCC:dac

Boston: 7697.1 028756.376

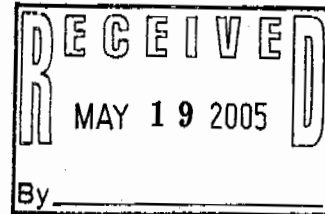
Rainer & O'Connor, LLP
Attorneys at Law
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bert K. Rainer
ristopher S. O'Connor
aniel C. Federico
win W. Barrett, III
an Matthews
emy Theerman
ristopher S. Brown
onaci Antonello, MD
nald H. Rainer (retired)

May 18, 2005



David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

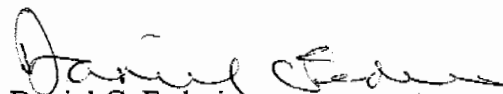
RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel

Dear Attorney Nash:

With reference to the above matter, would you please find enclosed Re-Notice of Taking Deposition of Frank Romano, scheduled for Friday, June 24, 2005, at 12:00 p.m., here at our Revere office.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf
Enclosure

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant.

RE-NOTICE OF TAKING DEPOSITION

TO: ALL PARTIES

Please take notice that at 12:00 o'clock p.m., on Friday, June 24, 2005 at the offices of Rainer, Walsh & O'Connor, 60 V.F.W. Parkway, Revere, Massachusetts 02151, the plaintiff in this action, by his attorney, will take deposition upon oral examination of **Frank Romano** pursuant to Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

By Plaintiff's Attorney,



Daniel C. Federico

B.B.O. #645717

RAINER & O'CONNOR, LLP

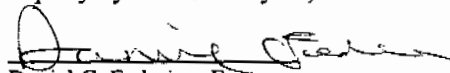
60 V.F.W. Parkway

Revere, Massachusetts 02151

(781) 289-7900

CERTIFICATE OF SERVICE

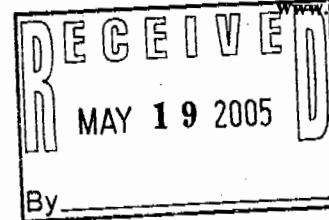
I hereby certify that on this day a true Copy of the above document was served upon the attorney(s) of record for each other party by mail on May 18, 2005.


Daniel C. Federico, Esq.

Rainer & O'Connor, LLI
Attorneys at Law
60 Veterans of Foreign Wars Parkway
Revere, Massachusetts 02151

Telephone (781) 289-7900
Facsimile (781) 485-0624
Toll Free (800) 451-2220

www.rainerlaw.com



May 18, 2005

Daniel Puccio
119 Fellsway West
Medford, MA 02155

RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel

Dear Mr. Puccio:

Enclosed please find a Notice of your Deposition Subpoena scheduled for Friday, June 24, 2005, at 10:00 a.m., here at our Revere office.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf
Enclosure

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant. _____

DEPOSITION SUBPOENA - M.R.C.P. Rule 30(a) & Rule 45

TO: Daniel Puccio
119 Fellsway West
Medford, MA 02155


GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of Massachusetts Rules of Civil Procedure to appear and testify on behalf of the plaintiff before a Notary Public of the Commonwealth, at the office of RAINER & O'CONNOR, LLP, 60 V.F.W. Parkway, Revere, Massachusetts 02151; on the 24th day of June, 2005 at 10:00 o'clock a.m. and to testify as to your knowledge, at the taking of the deposition in the above-entitled action.

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.

DATED: 05-18-05

By Plaintiff's Attorney,



RAINER & O'CONNOR, LLP
Daniel C. Federico
B.B.O. #645717
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

CERTIFICATE OF SERVICE

I, Daniel C. Federico, do hereby certify that I have on May 18, 2005 served a copy of the above documents by filing notice via first class mail, postage pre-paid, on the following:

David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110


Daniel C. Federico, Esq.

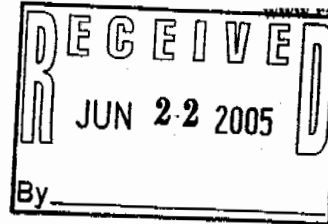
Rainer & O'Connor, LL

Attorneys at Law

**60 Veterans of Foreign Wars Parkway
Revere, Massachusetts 02151**

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June 21, 2005

David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel

Dear Attorney Casey:

Please be advised that the Deposition of Daniel Puccio scheduled for Friday, June 24, 2005, at 10:00 a.m. has been postponed until further notice.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

Rainer & O'Connor, LLP
Attorneys at Law
60 Veterans of Foreign Wars Parkway
Revere, Massachusetts 02151

Robert K. Rainer
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Ronald H. Rainer (retired)

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Toll Free (800) 451-2220

www.rainerlaw.com

June 22, 2005

David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110
Sent via Facsimile (617) 737-0052

RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel

Dear Attorney Casey:

Please be advised that the Deposition of Frank Romano scheduled for Friday, June 24, 2005, at 12:00 p.m. has also been postponed until further notice.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

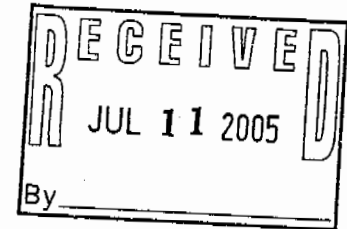
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Christopher S. O'Connor
Daniel C. Federico
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Ryan Matthews
Jeremy Theerman
Christopher S. Brown
Michael Antonello, MD
Donald H. Rainer (retired)

July 8, 2005



David C. Casey, Esq.
LITTLER MENDELSON, P.C.
One International Place, Suite 2700
Boston, MA 02110

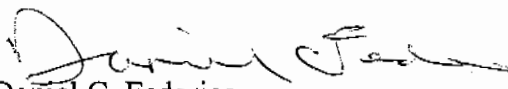
RE: David Dean v. Lowes Home Centers, Inc.
United States District Court, Civil Action No: 04-12605-mel

Dear Attorney Nash:

With reference to the above matter, would you please find enclosed Re-Notice of Taking Depositions of Dan Puccio and Frank Romano, re-scheduled for Friday, August 12, 2005, at 10:00 a.m. and 12:00 p.m., here at our Revere office.

Thank you for your attention to this matter.

Very truly yours,


Daniel C. Federico

DCF/kdf
Enclosure

cc: Janice M. Dayton
19 Sea Fox Lane
Gloucester, Massachusetts 01930

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant.

RE-NOTICE OF TAKING DEPOSITION

TO: ALL PARTIES

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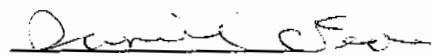
By Plaintiff's Attorney,



Daniel C. Federico
B.B.O. #645717
RAINER & O'CONNOR, LLP
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

CERTIFICATE OF SERVICE

I hereby certify that on this day a true Copy of the above document was served upon the attorney(s) of record for each other party by mail on July 8, 2005.


Daniel C. Federico, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-1265-mel

DAVID DEAN,
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.)
Defendant.


RE-NOTICE OF TAKING DEPOSITION

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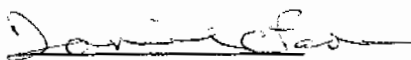
You are invited to attend and cross-examine.

By Plaintiff's Attorney,


Daniel C. Federico
B.B.O. #645717
RAINER & O'CONNOR, LLP
60 V.F.W. Parkway
Revere, Massachusetts 02151
(781) 289-7900

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Daniel C. Federico, Esq.